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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,699	08/18/2003	Pascal Druzgala	04-1028-B	5094

20306 7590 11/03/2005

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EXAMINER

KANTAMNENI, SHOBHA

ART UNIT PAPER NUMBER

1617

DATE MAILED: 11/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	Application No. 10/643,699	Applicant(s) DRUZGALA ET AL.	
	Examiner Shobha Kantamneni	Art Unit 1617	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 03 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

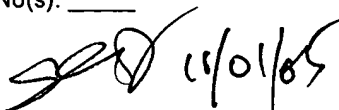
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: NONE.  
Claim(s) objected to: NONE.  
Claim(s) rejected: 23-29 and 32-34.  
Claim(s) withdrawn from consideration: NONE.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See page 2.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_

  
**SHAOJIA A. JIANG, PH.D.**  
**PRIMARY EXAMINER**

Applicant's proposed amended claim 34 herein, change limitations and scope of the claim, inserting new limitations into the independent claim 34, present new issue for consideration by the Examiner. Therefore, the proposed amendment After Final will not be entered.

The rejection of claims 23-29, 32, 33, and 34 (in part) under 35 U.S.C. 112, first paragraph is MAINTAINED for reasons as discussed in the Final Office Action dated 08/01/2005, and those found below

Applicant argues that "As analogs of mibefradil, they are expected to have biological activities similar to those of mibefradil. Therefore, since mibefradil is a known calcium channel inhibitor, it stands to reason that the currently claimed compounds are calcium channel inhibitors." This argument is not persuasive because compounds in claim 23, will have different physiochemical properties. The compound of structure in claim 23, with X = (CH<sub>2</sub>)<sub>6</sub>, and R<sub>1</sub> = C<sub>6</sub> alkyl will have different physical properties such as lipophilicity, binding abilities, hydrolyzability etc. than a compound with X = O, and R<sub>1</sub> = C<sub>1</sub> alkyl substituted with OH or NH<sub>2</sub>, and thus will have different calcium blocking ability or maybe lack any calcium blocking ability. In the instant case, the claimed invention is highly unpredictable because the claimed compounds represented by structures in claims would not only have different calcium channel blocking ability or lack calcium channel blocking ability, but also different abilities toward enzymatic hydrolysis.

Applicant remarks that "In fact, the Office, in the office action mailed February 8, 2005, stated that the specification was enabling for calcium channel blocking compounds of structures shown in Figures 1-9 of the specification." These remarks have been considered, and the examiner would like to make it clear that in the office action mailed on February 8, 2005, two 112, first paragraph rejections were made. The rejection that applicant is referring to was made for claims 22, 32, and 33 for the scope of enablement for the compounds as it was not clear what compounds were claimed with respect to the claimed characteristics.

Rejections Based on 35 U.S.C 102(b):

Rejection of claim 34 under 35 U.S.C. 102(b) as being anticipated by Brance et al. (US 4,808,605) is MAINTAINED.

Examiner acknowledges the applicant's remarks that R<sub>3</sub> should be "lower-alkoxy-lower-alkylcarbonyloxy" in the office action dated 08/01/2005.